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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/716,740	11/20/2000	Peter Worthington Hamilton	5922R2C3	8924

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THE PROCTER & GAMBLE COMPANY
INTELLECTUAL PROPERTY DIVISION
WINTON HILL TECHNICAL CENTER - BOX 161
6110 CENTER HILL AVENUE
CINCINNATI, OH 45224

EXAMINER

CHANG, VICTOR S

ART UNIT PAPER NUMBER

1771

DATE MAILED: 02/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/716,740

Applicant(s)

HAMILTON ET AL.

Examiner

Victor S. Chang

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 January 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15, 17, 18, 38-52, 54, 55, 75, 80, 81 and 86-102 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15, 17, 18, 38-52, 54, 55, 75, 80, 81 and 86-102 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Introduction

1. The Examiner has carefully considered Applicants' remarks filed on 1/5/2006.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Rejections not maintained are withdrawn. In particular, Applicants' argument "... aluminum screen as taught by Kovac is not readily conformable structure ..." is persuasive. As such, the rejection in section 5 of Office action mailed 10/5/2005 is withdrawn. However, upon reconsideration, it is noted that additional teachings of Applicants' admitted prior render the instant invention obvious as claimed, and Applicants' Applicants' arguments are moot in view of the new grounds of rejection as follows.

Rejections Based on Prior Art

4. Claims 1-15, 17, 18, 38-52, 54, 55, 75, 80, 81, 86-102 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wilbur (US 2338749) in view of Sanders (US 5344693) and Applicants' admitted prior art, generally as set forth in section 4 of Office action mailed 10/5/2005, together with the following response to argument.

First, for the purpose of clarity, the Examiner repeats the relied upon prior art as follows: Wilbur's invention relates to wrappers of flexible paper or other equivalent sheet material (column 1, lines 1-3). Wilbur teaches that the invention can be embodied

in a label, wrapper, envelope or other article of flexible sheet material intended for other uses (page 1, column 2, lines 34-37). Fig. 7 shows that an embodiment in which a multiplicity of pin punctures 16 each of which is surrounded by an outstanding tubular burr 17, and surrounded by a coating of permanently sticky or tacky adhesive 18. The outstanding burrs 17 serve as means for normally shielding the adhesive coating against accidental contact with other objects. When end portions are overlapped and pressed together, the burrs or bosses 17 are collapsed, the ends are united by the adhesive (page 2, column 1, line 48 to column 2, line 8). Further, it is noted that Sanders' invention is directed to a spacing means which is capable of maintaining separation of a surface carrying an adhesive and an adjacent surface until it is required that the two surfaces shall unite one with another by the adhesive (column 1, lines 10-13), for a web of material (column 1, lines 60-62). In Fig. 4, Sanders clearly shows an embodiment of non-adherent protrusions being surrounded by adhesive as claimed (column 2, lines 16-18). As such, in the absence of unexpected results, it would have been obvious to one of ordinary skill in the art to modify Wilbur's wrapper with Sander's non-adherent protrusions, motivated by the desire to obtain a wrapper having an alternative suitable spacing means. It should be noted that the selection of and substitution of a known equivalent material based on its suitability for its intended use supported a *prima facie* obviousness determination. See MPEP § 2144.07. As to the wrapper's thickness and physical properties (conformable and low resiliency), it is noted that Appellants have admitted that it is known art that sheet materials with clinging character (i.e., cling film) can be used to form a closure for a container (i.e.,

conformable) (specification, page 1, lines 18-26). As such, in the absence of unexpected results, it is the Examiner's position that it would have been obvious to one of ordinary skill in the art of wrapper to modify Wilbur's wrapper with a suitable thickness and by selecting a known sheet material of physical properties, as admitted by Appellants, motivated by the desire to obtain a conformable wrapper for fully wrapped (sealed) applications.

With respect to Applicants' argument "... the combination of references is only motivated by the invention as set forth in the instant invention and ... Wilbur does not teach or suggest that the wrapper disclosed suffers from being porous ... There is no motivation with Wilbur to eliminate or replace the porous element of the invention" (Remarks, page 9, third paragraph), the Examiner notes that, first, Applicants appear to be arguing that the Examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). Second, the Examiner respectfully reminds Applicants that Appellants have admitted that it is known art that sheet materials with clinging character (i.e., cling film) can be used to form a closure for a container (i.e., conformable) (specification, page 1, lines 18-26), which clearly anticipates a non-porous film. Further, alternatively, in the absence of unexpected results, it would have been

obvious to one of ordinary skill in the art to modify Wilbur's wrapper with Sander's non-adherent protrusions, motivated by the desire to obtain a wrapper having an alternative suitable spacing means, as set forth above. Applicants' argument is not persuasive.

With respect to Applicants' argument "... the references fail to teach or suggest a wrap material being sufficiently flexible to readily conform to a desired surface ... Wilbur reference speaks of a flexible paper ... Sanders ... no mention of a degree of flexibility as claimed" (Remarks, page 9, 4th paragraph), the Examiner notes that, first, Applicants clearly argue against the references individually, and one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. Second, the Examiner respectfully reminds Applicants that while Wilbur teaches flexible paper, Wilbur also expressly teaches other article of flexible sheet material intended for other uses, as set forth above. In other words, since Wilbur's invention is not limited to flexible paper, Applicants argument is not persuasive. Third, while Sanders is silent about the degree of flexibility, the Examiner repeats that Appellants have admitted that it is known art that sheet materials with clinging character (i.e., cling film) can be used to form a closure for a container (i.e., conformable), as set forth above.

Finally, for claims 12, 49, 92 and 102, it is noted that Applicants have admitted that it is known art that a clinging film may be folded or wrapped around an item such that they cling to the item and/or to themselves. The clinging character of such materials also permits their use in combination with semi-enclosed rigid, semi-rigid, or flexible containers to provide a fully enclosed container structure (specification, page 1,

lines 28-31). As such, in the absence of unexpected results, it would have been obvious to one of ordinary skill in the art to modify the wrapper film of Wilbur in view of Sanders to coat adhesives on both sides of the wrapper, motivated by the desire to obtain a film which is able to cling to the item and/or to themselves to provide a fully enclosed container structure.

Conclusion


5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor S. Chang whose telephone number is 571-272-1474. The examiner can normally be reached on 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel H. Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

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For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Victor S Chang
Examiner
Art Unit 1771

2/6/2006